



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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Senate Bill 300

Senate Committee on Transportation, Tourism, Forestry, and Natural Resources

Department of Natural Resources Testimony
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Bureau of Forest Management
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Mr. Chairman and Committee Members:

Good morning. My name is Kathy Nelson and I am the Forest Tax Section Chief within the DNR's Bureau of Forest Management. I appreciate this opportunity to appear before you to discuss Senate Bill 300.

SB 300 attempts to restrict the ability of individual private landowners to divide their landownership into smaller ownerships and then to enter those ownerships into the Managed Forest Law (MFL) program as closed to public recreation.

As you know, the MFL program was enacted in 1985 to provide an incentive for private landowners to practice sustainable forestry on their lands. MFL struck a balance between private landowners' interest in entering the MFL program and the public's desire to support the program. Landowners were allowed to pay an acreage share tax instead of regular ad valorem property taxes and were given in depth assistance in forest management practices. Landowners paid their deferred property taxes when timber was harvested.

Private forests provide an array of benefits to the public. These benefits include clean air, clean water, wood products, settings for recreation and tourism, wildlife habitat, carbon sequestration and scenic beauty. Our forests generate jobs throughout Wisconsin and contribute billions in value to Wisconsin's economy. Forests are an essential element of Wisconsin's landscape and the places where millions of us live, work and recreate. MFL is a key tool in keeping forested land in forest and providing these benefits to both present and future generations.

One major public benefit that MFL provides is access to private lands for hunting, fishing, hiking, sight-seeing and cross-country skiing. Landowners are allowed to close up to 160 acres of land to public access, with the intent that the remaining lands would be left open to public access. Owners can be an individual person, a group of people, or entities, such as corporations or partnerships. The drafters of MFL worked to strike a balance between the desires of the public for land on which to recreate, and the interests of landowners to restrict who can recreate on their properties. The size limitation was an effective approach to balance those interests.

Through the course of time, landowners have learned to divide their properties so that they may take advantage of the MFL program's closed acreage limits. Small landowners have divided their properties so that a husband and wife can have 3 properties, his, hers and theirs. Large landowners have divided their properties so that they can have any number of ownerships

through the creation of limited liability corporations. The department recognizes that these actions violate the intent of the MFL as enacted by the legislature.

SB 300 would prevent landowners from entering their lands into MFL as closed to public access if their lands were a part of a larger parcel under a single ownership that exceeded 8,000 acres in size as of January 1, 2009. In essence, landowners who meet the criteria of SB 300 may only enter their lands into MFL as open to public access. The incentive to subdivide property into small units for the purpose of entering the entire ownership into MFL as closed to public access would be eliminated.

This bill in its present form generates several issues that need to be addressed.

1. The statute uses the term "parcel," yet there is no definition of parcel in statute. The department has a definition of "parcel" in NR 46 that is used to determine eligibility of lands for designation as MFL, and this definition is "the acreage of contiguous lands that are described in a petition, or application, and that is under the same ownership." It would appear that the SB 300 definition may be broader, or encompass a wider range of situations, than the definition of parcel in NR 46. Would a parcel be a contiguous block of 8,000 acres or all lands owned in the county or a township? Would lands need to be contiguous? The department asks that an amendment be made to SB 300 to provide a clear definition of a parcel or of the legislative intent to help the department to fulfill its duty in carrying out new MFL provisions if this bill is enacted.
2. The department would need the tools to carry out SB 300. Reviews of deeds and tax statements occur during the entry process; however the review is done solely for the purpose of determining current ownership. SB 300 would require the department to determine past ownership of lands as well. Title searches may be required on future MFL entries and transfers. These title searches may be relatively easy at first, but would become more difficult with time since the trend is to subdivide ownerships into smaller, more fragmented units.

It is unclear if the department can efficiently and effectively determine past ownership of lands if these ownerships have been purchased under separate deeds. A title search may or may not show a relationship to other lands not associated the lands listed in any particular deed. A permanent record or map of land ownership as of January 1, 2009 may be required in county offices to assist the department in this determination. The department asks that the legislature amend SB 300 to provide for tools to help the department fulfill its duty in carrying out new MFL provisions if this bill is enacted.

3. SB 300 would prohibit small landowners who purchase forested lands from large owners, including industrial forests from entering into the MFL program as closed, even if they purchased 160 acres of land or less. The incentive for small private landowners to enter the MFL program and sustainably manage their properties may be reduced if landowners are not given the choice to open or close lands open to public access. SB 300 would also impact those landowners who purchase existing MFL lands.

SB 300 provides opportunities for further discussion to solve the larger public access issues associated with MFL. The department is well aware of the concerns presented by the public in accessing private lands for recreational activities and has discussed proposed solutions, yet we understand that there are many ways in which the issues can be resolved with some of the issues being resolved easier than others. The department is ready to work with you as you work through these issues.

Issue #1: MFL lands are designated as "open" when the landowner has no legal access to the property.

There are MFL properties where the landowner has no legal access to their lands, yet have enrolled it as open to public recreation. Hunters and recreational users must ask permission of the adjacent landowner for permission to cross lands to access the open MFL lands. If the adjacent landowner denies permission to cross his or her lands, the MFL landowner is effectively paying the open acreage share tax rate for lands that cannot be accessed by the general public.

A similar situation occurs when landowners create a number of LLCs and deny permission for hunters to cross one LLC that is closed to public access in order to gain access to another LLC that is open to public access. This behavior appears to disregard the intent of the MFL program to allow access to open MFL lands and effectively prevents the public from accessing open MFL lands.

A possible solution may be to require that landowners must provide proof of legal access to open MFL lands as a condition to MFL entry. Landowners who lose legal access to their lands would no longer be allowed to have the open tax status.

Issue #2: Landowners maximize the amount of closed acreage through the creation of multiple combinations of owners and exceed the 160 acre closed limitation for an individual owner.

The ability of landowners to create ownerships with any combination of multiple people so that the maximum amount of lands can be closed to public access appears to disregard the intent of the MFL program. An example would be a husband and wife, where the husband has 160 acres, the wife has 160 acres and together they own 160 acres. These two people could have 480 acres of land closed to public access because three separate ownerships occur.

A possible solution may be to link landowners and MFL lands so that if a landowner is listed on one MFL and has his or her maximum of 160 acres closed he or she will not be able to be listed on another deed or ownership unless that land is entered into MFL as open to public access. In the case of a husband and wife, a minimum of 160 acres would be left open to public access or left on the regular ad valorem property tax rolls.

Issue #3: Landowners maximize the amount of closed acreage through the creation of limited liability corporations (LLCs).

Landowners have taken advantage of ch. 183, Wis. Stats. and have created many limited liability corporations (LLCs). These LLCs are considered separate ownerships for tax law purposes because each entity created under ch. 183 is recognized as a separate LLC under state law.

There are a multitude of reasons why people create LLCs and other similar entities, like trusts. Some of these reasons are for tax and succession planning. The ability of landowners to create a multitude of LLCs of which no one LLC exceeds 160 acres in size, and then to enter those lands into the MFL program appears to disregard the intent of the MFL program to close the maximum of 160 acres and to leave the remaining lands open to public access.

Possible solutions to this situation are difficult and warrant careful consideration. Arguments can be made that since people, and not companies, recreate on lands, only individual people should be allowed to close lands to public access. Should a bill such as this occur any ownership that is a corporation, trust or some other entity would be required to leave lands open to public access.

There are a multitude of options that could be developed to change the behavior of landowners so that more lands are accessible to the public for recreational activities. The department looks forward to working with you and your staff to identify these options.

It is important that the options that are developed and introduced as bills continue to provide enough incentive for landowners to enter the MFL program to practice sustainable forestry on their lands, and provide enough return on investment for the public to support the MFL program.

I appreciate this opportunity to share with you the department's review of SB 300 and would be glad to answer any questions you might have.